MASHAHA NAVIGATION SDN. BHD.

v.

PALM OIL PRODUCTS (M) BHD. & ANOR.

HIGH COURT MALAYA, KUALA LUMPUR
SITI NORMA YAAKOB J
[SUIT NO. C6976 OF 1985]
6 DECEMBER 1988

CONTRACT: *Allegation of breach of contract - Claim for damages for loss of income arising from breach and special damages - Whether the Letter of Intent amounted to a binding contract.*

CIVIL PROCEDURE: *Summary judgment application - Appeal against Senior Assistant Registrar's decision allowing interlocutory judgment.*

The plaintiff who were the owners of the vessel MT "Kemaman" made modifications to the vessel to make it suitable for the carriage of the defendant's cargo and incurred costs amounting to S$1,099,746 and RM9,163.42, this was in pursuance of a letter of intent dated 15 September 1983 issued by the defendant. The defendant failed to execute a contract of affreightment with the plaintiff. The plaintiff sued the defendants.

The Senior Assistant Registrar entered interlocutory judgment against the defendant pursuant to O. 14 of the Rules of the High Court 1980. The defendants appealed against this decision.

Held:
That on the affidavits there was a dispute as to the legal effect of the letter of intent with the defendant claiming that under the circumstances it was executed, it only envinces an intention to enter a contract the particulars of which had not been agreed upon. The appeal would therefore be allowed with costs.

[Appeal allowed with costs.]

Case referred to:
British Steel Corp. v. Cleveland Bridge and Engineering Co. Ltd. [1984] 1 All ER 504

Legislation referred to:
Rules of the High Court 1980, O. 14

For the Appellants/Defendants - Mr. David Lingam (Mr. D. Appaduray with him); M/s. Sidek Zubir Sulaiman Nadzir & Partners
For the Respondents/Plaintiffs - Mr. Sivasubramaniam; M/s. Siva, Ram & Associates
For the Intervener - Mr. Nagarajah; M/s. Shook Lin & Bok

JUDGMENT

Siti Norma Yaakob J:

In this breach of contract suit, the plaintiff claims 3 heads of quantified damages, one representing the loss of income resulting from the breach and the other two being special damages for actual expenses incurred in carrying out specific works pursuant to the contract and for the breach.

The plaintiff as the owners of a vessel called MT "Kemaman" (the vessel), are engaged in the business of carrying and transporting goods. On 15 September 1983, the defendant executed a letter of intent in their favour whereupon in consideration of the plaintiff carrying

out the necessary modification works on the vessel for the purpose of transporting the defendant's refined palm oil and palm acid oil (the cargo) from the defendant's refinery in Dungun to ports identified in the letter of intent, the defendant agreed to execute a contract of affreightment with the plaintiff on or before the completion of the modification works. Particulars of the quantity and capacity of the cargo to be transported, the freight rates and the period of the contract to be entered into are all spelt out in the letter of intent.

Pursuant to the letter of intent, the plaintiff proceeded to modify and convert the vessel to make her suitable for the carriage of the defendant's cargo and in this respect incurred costs amounting to S$1,099,746 and RM9,163.47. Upon completion of such works, the plaintiff accordingly informed the defendant on 17 March 1981 that the vessel was ready for the defendant's use and sought their instructions as to when the loading can commence. The defendant did not respond to this letter and neither did they execute any contract of affreightment with the plaintiff and for this breach, the plaintiff now claim the three amounts as particularised in their statement of claim.

In disputing liability, the defendant maintained that the letter of intent is not a concluded binding contract as they had issued it at the insistence of the plaintiff to enable the plaintiff to use it to obtain banking facilities.

On an O. 14 application, the Senior Assistant Registrar dismissed the defendant's objection and entered interlocutory judgment against the defendant for damages to be assessed. It is against this order that the plaintiff has now come before me by way of an appeal.

The only issue raised is on the legal effect of the letters of intent itself. It is the plaintiff's contention that the letter was intended to be acted upon and it was acted upon by the plaintiff in that they extended their expertise and incurred considerable costs by converting and modifying the vessel for the defendant's specific use in the carriage of the defendant's cargo and under such circumstances, the defendant cannot now plead that the letter of intent does not bind them.

In *British Steel Corp. v. Cleveland Bridge and Engineering Co. Ltd.* [1984] 1 All ER 504, where on somewhat similar circumstances, the Court held that whether a contract has come into existence

> must depend on a true construction of the relevant circumstances between the parties and the effect (if any) of their action pursuant to those communications. There can be no hard and fast answer to the question whether a letter of intent will give rise to a binding agreement, everything must depend on the circumstances of the particular case. Where as here, one party is seeking to claim damages for breach of contract, the question whether any contract came into existence is of crucial importance.

In the instant case, the letter of intent was executed, the following correspondence and communication between the parties. It started with an offer by the plaintiff, contained in their letter dated 4 March 1983, offering their vessel for the carriage of the defendant's cargo. In the said letter, reference is made to a letter to be executed for banking purposes. It is not disputed that what the plaintiff wanted was for the defendant to execute a letter of intent in their favour, but what is disputed is the intention and effect of such a letter.

The first letter of intent issued by the plaintiff is dated 25 March 1983 and I quote below 2 relevant paragraphs.

We are pleased to inform you that we intend to sign with you a COA preferably beginning August '83 for carriage of fully refined palm oil and fatty acids (sepstsyr vompstymrny) from Kemaman/Dungun for discharge ports of Pasir Gudang/Singapore/Kuantan.

The terms and conditions governing the COA shall be further discussed.

The plaintiff was not satisfied with the contents of this letter of intent and requested the defendant to prepare a fresh one with further details to meet the bank's requirements. The defendant obliged and issued the second letter of intent dated 4 June 1983. In this second letter, the defendant again reiterated that they can only commence negotiations on the contract of affreightment at a later date due to the delay in the completion of their refinery project. For the first time, particulars on location, capacity, estimated coastal cargo movement, port of loading, ports of discharge are specified and identified.

This second letter was again not acceptable to the plaintiff as the facilities could not be obtained based on the letter as drafted.

On 10 September 1983, the plaintiff sent a specimen draft letter of intent to be executed by the defendant on the defendant's letterhead. The letter of intent that was finally executed by the defendant dated 15 September 1983, was therefore the third letter of intent executed by the defendant and it was this letter of intent that finally secured the plaintiff with the necessary banking facilities.

On the affidavits there is a dispute as to the legal effect of the letter of intent with the defendant claiming that under the circumstances it was executed, it only envinces an intention to enter into a contract the particulars of which had not been agreed upon.

Various cases were cited to me to establish that such a letter binds the defendant but in those cases, there were full trials where evidence was led to show the intention of the parties at the time the letters of intent were executed.

Likewise since the true intention of the parties can only be ascertained by oral evidence, I had ruled that this was not a case for which O. 14 was applicable and accordingly I allowed the appeal with costs.

Also found at [1989] 1 CLJ 959